

## CALIFORNIA INFRASTRUCTURE AND ECONOMIC DEVELOPMENT BANK (I-Bank)

### STAFF REPORT

**ISSUE:** Staff recommends approval of Resolution 09-29 to amend one procedure of the California Infrastructure and Economic Development Bank's "Policies and Procedures for Conduit Revenue Bond Financing for Economic Development Facilities" to extend deadlines for submittal of applications for Board consideration.

#### **BACKGROUND INFORMATION:**

Government Code Section 63044 requires the Board to, "[E]stablish procedures for the expeditious review of applications for the issuance or approval of bonds to finance economic development facilities." Such procedures along with policies for the expeditious review of bonds to finance economic development facilities were adopted at the first I-Bank Board meeting held on January 26, 1999, and amended on August 21, 2008, to clarify the I-Bank's policy relative to minimum acceptable ratings (Conduit Bonds Policies and Procedures) (see Exhibit A—Policies and Procedures for Conduit Revenue Bond Financing for Economic Development Facilities). The Conduit Bonds Policies and Procedures do not apply to public development facilities financed by the I-Bank through the Infrastructure State Revolving Fund Program or to Public Agency Revenue Bonds issued for other State entities such as the State Water Resources Control Board and the California Energy Commission.

In the future, the I-Bank plans to conduct an in-depth review of the Conduit Bonds Policies and Procedures to insure that they reflect current Board policy and provide appropriate direction to I-Bank staff, given recent changes in the capital market. However, recent events affirming the continuation of mandated furloughs of I-Bank staff for three days a month during fiscal year 2009-2010 create an immediate need for action in one area of the Conduit Bonds Policies and Procedures regarding the timing of the submittal of applications for Board consideration of the financing request.

Subsection B. of Section III. Application Process states:

- B. **Final Resolutions.** A Participating Party must submit one original and two copies of a project application not later than 4:00 P.M. on the 20th calendar day preceding the date of the meeting at which a Participating Party wishes the Infrastructure Bank to adopt a final resolution authorizing the sale of bonds.

Because the I-Bank Board Agenda must be published 10 days prior to the Board meeting, this leaves 10 calendar days for staff to review each application and determine if it is complete enough to be placed on the agenda. Given that staff reports must be completed and briefings of Board member must occur during the week prior to a meeting, the time necessary to conduct a thorough analysis is considerably shortened as a result of staff furloughs.

To address this issue, staff recommends changing the deadline from 20 calendar days to 30 calendar days. This change would be enable the I-Bank to remain responsive to market needs, and provide the staff more time necessary to conduct a thorough analysis and a Tax Equity and

Fiscal Responsibility Act (TEFRA) hearing and prepare a report in time for I-Bank Board consideration.

Additionally, given the increasing complexity of conduit revenue bond structures, which appears to be principally driven by the recent changes in the financial markets that are presumed to be permanent, staff believes that it will be necessary to maintain the proposed lengthened application deadline even after the mandated furlough period expires.

**RECOMMENDATION:** Staff recommends approval of Resolution 09-29 amending the California Infrastructure and Economic Development Bank “Policies and Procedures for Conduit Revenue Bond Financing for Economic Development Facilities” to extend deadlines for submittal of applications for Board consideration.

## Exhibit A – Policies and Procedures for Conduit Revenue Bond Financing for Economic Development Facilities

### CALIFORNIA INFRASTRUCTURE AND ECONOMIC DEVELOPMENT BANK

Note: All capitalized terms have the same meaning as contained in Government Code Section 63000 *et seq.*

#### I. Eligible Projects

- A. Eligible projects include real and personal property, structures, buildings, equipment, and supporting components thereof that are used to provide industrial, recreational, research, commercial, utility, or service enterprise facilities, community, educational, cultural, or social welfare facilities and any parts or combinations thereof, and all facilities or infrastructure necessary or desirable in connection therewith, including provision for working capital, but shall not include any housing.
- B. The Infrastructure Bank will not issue Bonds for projects that another State of California conduit issuer was specifically created to finance. For example, the Infrastructure Bank will not issue Bonds for health facilities that are eligible for financing from the California Health Facilities Financing Authority or pollution control projects that are eligible for financing from the California Pollution Control Financing Authority.
- C. The Infrastructure Bank's normal policy will be to issue Bonds which will bear a long-term rating of at least an "A3" from Moody's Investors Service (Moody's), or and "A-" from Standard & Poor's (S&P) or Fitch Ratings, Inc. (Fitch), and/or a short-term rating of at least a "VMIG 1" or "P-1" from Moody's, or "SP-1" or "A-1" from S&P, or "F1" from Fitch, based either on the credit of the Participating Party or on a credit enhancement from a bank, insurance company or other guarantor acceptable to the Infrastructure Bank. The Infrastructure Bank may consider a waiver of the minimum rating requirement based on special circumstances, or a waiver pursuant to subsection D.
- D. When the Infrastructure Bank agrees to waive the requirement for a credit rating stated in paragraph (C), the Participating Party will be required to use a private placement or limited underwritten offering, subject to the following additional conditions:
  - 1. **Sophisticated Investor.** The investor(s) will be required to sign a "sophisticated investor" letter acceptable to the Infrastructure Bank. Each investor must be a qualified institutional buyer within the meaning of S.E.C. Rule 144A, or an equivalent sophisticated investor with a demonstrated understanding of the risks associated with the municipal market, acceptable to the Infrastructure Bank.
  - 2. **Resale Limitations.** Depending on the circumstances of the proposed sale, the Infrastructure Bank may require conditions for the resale of the Bonds after initial issuance.

3. **Minimum Denomination.** The Infrastructure Bank will require a minimum bond denomination of at least \$100,000 on private placements or limited underwritten offerings; denominations may be higher depending on the circumstances of the sale.

## II. **Application Content**

- A. **Inducement Resolutions.** A Participating Party wishing the Infrastructure Bank to adopt a resolution of preliminary intent in connection with the issuance of conduit revenue bonds, shall submit a completed project application as provided in II.B. below or may submit a pre-application that includes the following information:

1. Name, address, and legal structure of the Participating Party;
2. Name, address, telephone number, fax number, and e-mail address, if available, of the principal contact person for the application;
3. Description of Participating Party's business or mission and objectives;
4. Description, purpose and location of project;
5. Amount of financing requested;
6. Proposed sources and uses of funds for the project;
7. Description of whether the project involves a relocation from another California location. If yes, explain the reasons for the relocation;
8. Description of public benefits of the project;
9. Name, address, telephone number, fax number, and e-mail address of proposed bond counsel, underwriter/private placement agent, financial advisor, and credit enhancement provider.
10. Attachments: highest level of financial statements available for the past three years; and non-refundable application fee for \$1,500 made payable to the California Infrastructure and Economic Development Bank.

- B. **Final Resolutions.** A Participating Party wishing the Infrastructure Bank to adopt a final resolution authorizing the sale of Bonds for a project, shall submit or shall have submitted in connection with the adoption of a resolution of preliminary intent, a completed project application that includes the following information:

1. Name, address, and legal structure of the Participating Party;
2. Name, address, telephone number, fax number, and e-mail address of the principal contact person for the application;
3. Names of officers of the Participating Party;
4. History and description of the Participating Party;
5. Location of project to be financed;
6. Present or proposed owner of the project site, including name and address of legal owner and terms and nature of occupancy;
7. Description of the purpose and functions of the project to be financed;
8. Description of whether the project involves a relocation from another California location. If yes, describe why the relocation is necessary;

9. Amount of financing requested;
10. Summary of the estimated cost of the project, including a sources and uses statement;
11. Amount of other public and private funds leveraged by the Bond financing;
12. Comprehensive summary of all public benefits of the project;
13. Description of any past, present or potential controversy connected with the project or the financing.
14. Description of the structure and type of the proposed financing, including whether it is fixed or variable rate, the expected maturity of the proposed debt, description of the credit enhancement, and the issue type such as public offering or private placement;
15. Expected credit rating;
16. Proposed date for bond issuance;
17. Name, address, telephone number, fax number, and e-mail address of all proposed finance team members, including bond counsel, underwriter/private placement agent, underwriter/private placement counsel, remarketing agent, financial advisor, Participating Party counsel, credit enhancement provider, trustee, and other participants.
18. Any other information required by the California Debt Limit Allocation Committee, or any other entity whose approval is needed to issue the Bonds.
19. A senior organization official with primary responsibility for financing the project must sign the following certification: "The undersigned hereby certifies that I am authorized to execute this application on behalf of the [Participating Party] and that to the best of my knowledge, the application, including all exhibits and attachments, is complete, true, and accurate."
20. Attachments: commitment letter for credit enhancement, if available; highest level of financial statements available for the past three years, if not previously submitted; and non-refundable application fee for \$1,500 made payable to the California Infrastructure and Economic Development Bank, if not previously submitted.

### III. **Application Process**

- A. **Inducement Resolutions.** A Participating Party must submit one original and two copies of a pre-application or project application not later than 4:00 P.M. on the 15th calendar day preceding the date of the meeting at which a Participating Party wishes the Infrastructure Bank to adopt an inducement resolution.

Infrastructure Bank staff shall fax a letter to the Participating Party within two business days of receiving the pre-application indicating whether it is complete. If the pre-application is complete, the letter shall state that the adoption of an inducement resolution will be placed on the agenda for the next Infrastructure Bank meeting.

If the pre-application is not complete, the letter shall specify the deficiencies and provide the Participating Party with one business day in which to correct the deficiencies. If the required information is received within one business day, Infrastructure Bank staff shall promptly notify the Participating Party that the adoption of an inducement resolution will be placed on the agenda for the next Infrastructure Bank meeting. If the required information is not received within one business day, Infrastructure Bank staff shall fax a letter to the Participating Party

stating that the pre-application is still incomplete and will not be placed on the agenda for the next Infrastructure Bank meeting. A Participating Party may submit another pre-application for consideration at a subsequent Infrastructure Bank meeting.

Prior to the adoption of an inducement resolution, Infrastructure Bank staff shall notify the city manager, county administrator or other appropriate local official where a project is located, of the receipt of an application for financing and the date of the meeting at which an inducement resolution is to be considered.

- B. **Final Resolutions.** A Participating Party must submit one original and two copies of a project application not later than 4:00 P.M. on the ~~20<sup>th</sup>~~ 30<sup>th</sup> calendar day preceding the date of the meeting at which a Participating Party wishes the Infrastructure Bank to adopt a final resolution authorizing the sale of bonds.

Infrastructure Bank staff shall fax a letter to the Participating Party within two business days of receiving the project application indicating whether it is complete. If the application is complete, the letter shall state that the adoption of a final resolution will be placed on the agenda for the next Infrastructure Bank meeting.

If the application is not complete, the letter shall specify the deficiencies and provide the Participating Party with four business days in which to correct the deficiencies. If the required information is received within four business days, Infrastructure Bank staff shall promptly notify the Participating Party that the adoption of a final resolution will be placed on the agenda for the next Infrastructure Bank meeting. If the required information is not received within four business days, Infrastructure Bank staff shall fax a letter to the Participating Party stating that the application is still incomplete and will not be placed on the agenda for the next Infrastructure Bank meeting. A Participating Party may submit another project application for consideration at a subsequent Infrastructure Bank meeting.

- C. Inclusion of an item on the agenda means that it will be considered by the Infrastructure Bank; it does not necessarily mean that the Infrastructure Bank will adopt the requested resolution.

#### IV. **Public Hearing**

- A. All federal tax-exempt Bonds will be subject to a noticed public hearing known as a Tax Equity and Financial Responsibility Act (TEFRA) hearing as required by Section 147(f) of the Internal Revenue Code of 1986, as amended.

#### V. **Relocation**

- A. It is not the intent of the Infrastructure Bank to issue Bonds to facilitate the relocation of a project from one jurisdiction of the state to another without substantial justification. The Infrastructure Bank will carefully weigh the overall public benefits created against the detriment to the community from which the project is relocated.

- B. Participating Parties that are relocating must describe, in their application, their efforts to work with the current community before abandoning the facility. The Participating Party should provide a timely notice to the city or county losing a facility of its intent to move, so that the jurisdiction will have time to initiate efforts to replace the jobs lost. An acknowledgment of the relocation from the city or county being vacated will also be requested.

## VI. Public Interest Criteria

- A. No Bonds shall be issued by the Infrastructure Bank unless the Infrastructure Bank shall have first determined that the financing meets the following public interest criteria:
1. The financing is for a project or a use in the State of California.
  2. The Participating Party is capable of meeting obligations incurred under relevant agreements relating to the Bonds issued by the Bank.
  3. Payments to be made under applicable financing documents are adequate to pay the current expenses of the Bank in connection with the financing and to make payments on the Bonds.
  4. The proposed financing is appropriate for the specific project.
  5. The project is consistent with any existing local or regional comprehensive plan.
- B. The Infrastructure Bank requires a defined public benefit before it is willing to act as a conduit issuer for tax-exempt or taxable bonds. The following represent supplemental public interest criteria required for each type of Participating Party:
1. **Industrial development bonds.** The issuance of bonds must demonstrate clear economic benefit to the community. Typically, this is shown by the creation of new jobs, retention of existing jobs, but other economic benefits may be considered. The Participating Party must also comply with the policies, procedures and public interest criteria of the California Debt Limit Allocation Committee.
  2. **501(c)(3)bonds.** Projects must provide clear evidence of a defined public benefit, such as provision of additional services, the provision of additional educational, scientific, social or cultural resources to the community or the State, or the creation or retention of jobs.
  3. **Exempt facility bonds.** Project must show clear economic, environmental or other public benefits to the State or the community such as increased local revenues, improvements to infrastructure, expansion of the State or local economy, job creation or retention, or other specific local goals and objectives.
  4. **Public jurisdiction.** Projects must demonstrate an enhancement of the infrastructure, or the economic, social or cultural quality of life for residents in the community or the State.
- C. Bonds which refund previously issued Bonds will not be subject to the supplemental public interest criteria listed in paragraph (B) above.

## VII. Contractor Certification

- A. Any Participating Party that utilizes bond proceeds for construction purposes, shall certify that the contractors are properly licensed by the Contractors' State License Board.
- B. All public works projects shall comply with Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 of the Labor Code.

VIII. **Finance Team Approval**

- A. The Infrastructure Bank shall have final approval of all finance team members, and consistent with State law, the State Treasurer shall have final approval of the underwriter/placement agent.

IX. **State Treasurer as Agent of Sale**

- A. Sale of the Infrastructure Bank's bonds shall be coordinated by the State Treasurer in accordance with Government Code Section 5702. The Treasurer shall sell the bonds within 90 days of receiving a certified copy of the final resolution authorizing the sale of bonds, unless the Board adopts a resolution extending the 90-day period.

X. **Bonds Not a Liability of the State**

- A. Bonds issued by the Infrastructure Bank do not constitute a debt or liability of the State or of any political subdivision thereof, other than the Infrastructure Bank or a special purpose trust, and do not constitute a pledge of the full faith and credit of the State or any of its political subdivisions, other than the Infrastructure Bank or special purpose trust, but are payable solely from the funds provided therefor under the Act and shall be consistent with Sections 1 and 18 of Article XVI of the California Constitution.
- B. All the bonds shall contain on the face thereof a statement to the following effect: "Neither the full faith and credit nor the taxing power of the State of California is pledged to the payment of the principal of, or interest on, this bond."

XI. **Bank Indemnity**

- A. Each Participating Party will be required, as part of bond documentation, to provide indemnities to the Infrastructure Bank, their members, officers, agents and employees.

XII. **Other**

- A. The Infrastructure Bank retains the right to entertain exemptions or waivers to those portions of the policies and procedures not required by law. If an exemption or waiver is requested of the Infrastructure Bank, additional time may be required for the application process.